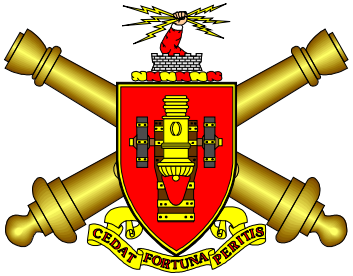


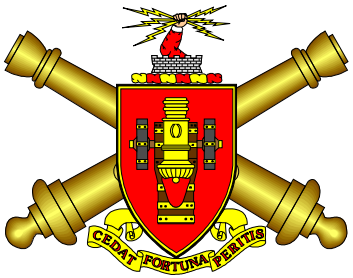
Victory thru Justice!

PRE-COMMAND COURSE

MILITARY JUSTICE AND COMMAND LEGAL ISSUES

COL Robert Burrell

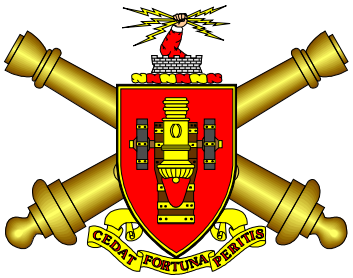
Staff Judge Advocate



OVERVIEW

Victory thru Justice!

1. **Command Philosophy / Concepts of Justice**
2. **SJA/Commander Relationship**
3. **Commander's Tool Box**
4. **UCMJ Issues**
5. **HOT TOPICS**



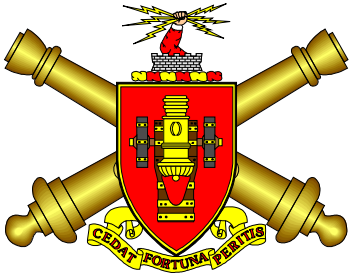
Victory thru Justice!

Command Philosophy and Concepts of Justice

-What do soldiers expect?

-What do you owe the soldier?

-United States v. SPC F.A. Trooper

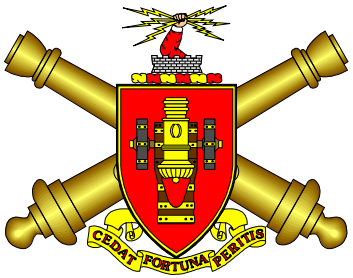


Victory thru Justice!

SJA/COMMANDER RELATIONSHIP

1. **The Trial Counsel**
   - **Trusted Advisor**
   - **What you should expect from your TC**
2. **Thinking Outside the Box / Staying Inside the Circle**

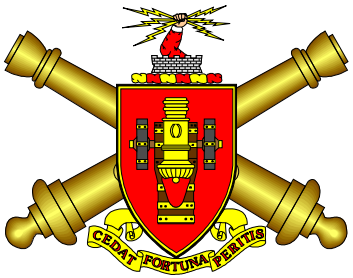
3. **What the SJA Needs From You**



Victory thru Justice!

THE COMMANDER'S TOOL BOX

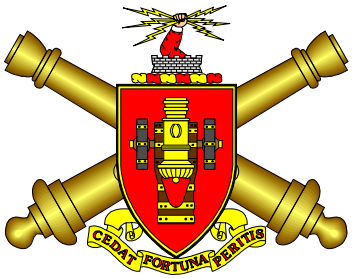
1. **Full Range of Options**
2. **The Rule of Unintended Consequences**



Victory thru Justice!

Getting to Square One

- Cdr's (informal) inquiry "shall"
- Put professionals to work
  - ➔**law enf, other experts (e.g. doc's, social worker, laboratory)**
- Art. 32b is different beast
  - ➔**Important command decisions**



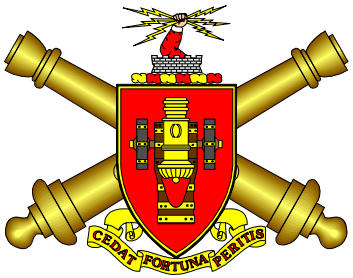
Victory thru Justice!

Deciding what to do*

- ***Nothing***
- **Flag**
- **Oral/written counseling**
- **Reprimand**
- **Bar**
- **Relief**
- **Admin sep**
- **Art 15**
  - ➔**summarized or formal, CG/FG**
- **Court-martial**
  - ➔**choose level**

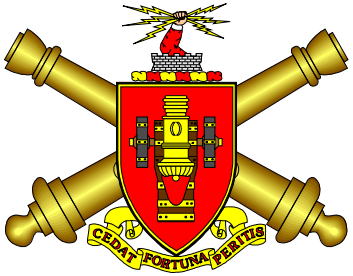
***R.C.M. 306(b)**

Rule for Courts-Martial 306(b)



Victory thru Justice!

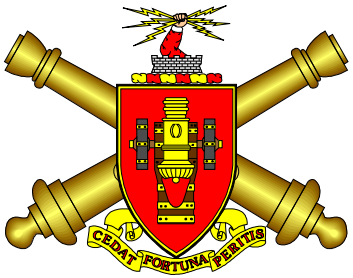
- **Character and service of soldier**
- **Nature of offense**
- **Good order and discipline**
- **Possible punishment**
- **Motive of victim/accuser**
- **Reluctance of victim to testify**
- **Cooperation of soldier**
- **Disposition of similar offenses**
- **Evidentiary problems**



Pretrial Confinement

Victory thru Justice!

- **Presumption**: free 'til trial
- BUT can impose conditions
- "Conditions on liberty" are **not** pretrial confinement
- Consequences w/ restriction

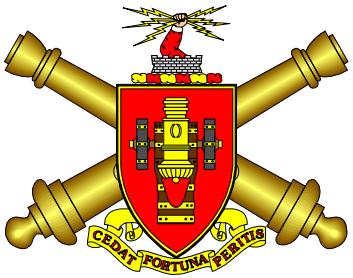


Victory thru Justice!

Cannot put in jail before trial

<u>UNLESS</u>:

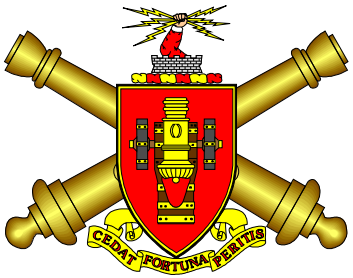
- **Likely to flee** …. or
- **Likely to commit *additional* serious misconduct**
- **SJA may oppose**



Sure you want trial?

Victory thru Justice!

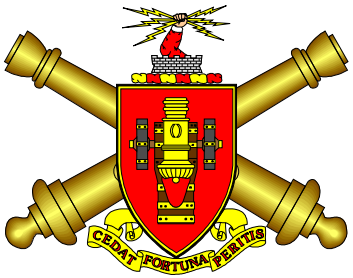
- **Chapter 10 in lieu of CM**
  - **quick**
  - **no conviction, no jail time**
  - **off your books, certain discharge, OTH (usually)**
  - **Accused must request**
  - **SCMCA & SPCMCA endorse**



Trial alternatives, (cont.)

Victory thru Justice!

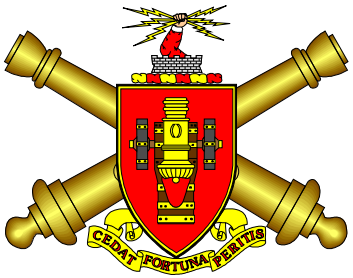
- **Pretrial agreement -- 2/3**
  - –creative **terms** or conditions
  - –certain **conviction**, sentence **cap**
  - – Guilty Plea proceedings instead of trial
- **Adnis Board**



Victory thru Justice!

UCMJ ISSUES

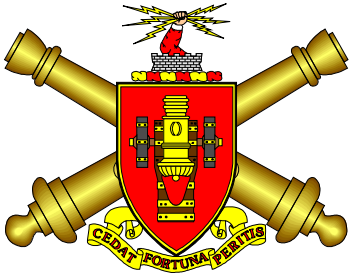
1. **Jurisdiction**
2. **Levels of Court**



Victory thru Justice!

Levels of Courts-Martia

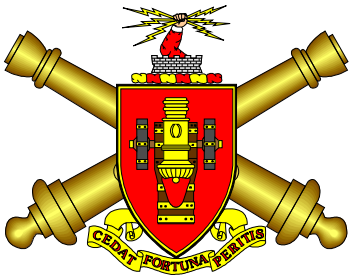
- Summary
- Special
- BCD Special
- General



Victory thru Justice!

After a conviction

- Local review, **CG action (unique to military justice)**
- Army Ct of Criminal Appls
- **Court of Appeals for the Armed Forces** (civilians)
- U.S. Supreme Court (rare)



thru Justice!

Jurisdiction in general

The Court

– properly convened

– area jurisdiction

- **Person**:

  – a soldier

- **Offense**: simple since 1987

The 10 Commandments of Unlawful Command Influence

Victory thru Justice!

1. IF YOU WANT IT DONE YOUR WAY, DO IT YOURSELF... THE COMMANDER
   MAY NOT ORDER A SUBORDINATE TO DISPOSE OF A CASE IN A CERTAIN WAY.

2. THE COMMANDER MUST NOT HAVE AN INFLEXIBLE POLICY ON DISPOSITION OR PUNISHMENT.

3. THE COMMANDER MAY NOT DISPOSE OF THE CASE IF THE ACCUSER,
   ACTUALLY OR NOMINALLY.

4. THE COMMANDER MAY NEITHER SELECT NOR REMOVE COURT MEMBERS TO OBTAIN PARTICULAR RESULTS AT TRIAL.

5. NO OUTSIDE PRESSURES MAY BE PLACED ON THE JUDGE OR COURT MEMBERS.

The 10 Commandments of Unlawful Command Influence

(Continued)

Victory thru Justice!

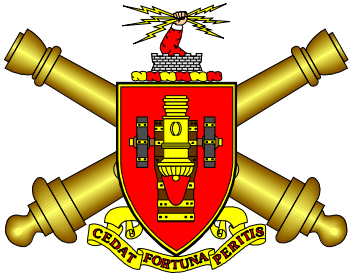
6. **WITNESSES MAY NOT BE INTIMIDATED OR DISCOURAGED FROM TESTIFYING.**

7. **THE COURT DECIDES PUNISHMENT. AN ACCUSED MAY NOT BE PU BEFORE TRIAL.**

8. **NO PERSON MAY INVADE THE INDEPENDENT DISCRETION OF THE MILITARY JUDGE.**

9. **THE COMMANDER MAY NOT HAVE AN INFLEXIBLE ATTITUDE TOWA CLEMENCY.**

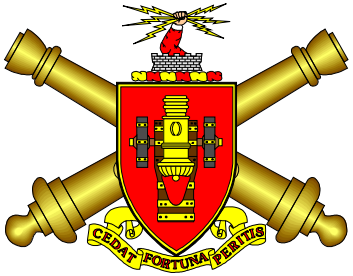
10. **IF A MISTAKE IS MADE, RAISE THE ISSUE IMMEDIATELY.**



Victory thru Justice!

Military Justice
FINAL THOUGHTS

- Commander's system of Discipline **and** Justice
- Individual consideration of each case
- Judicial-Prosecutorial role

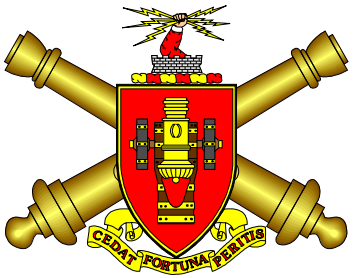


Victory thru Justice!

Ethics "BLUF"

Abide by, Teach, and Live the Traditional Army Values;

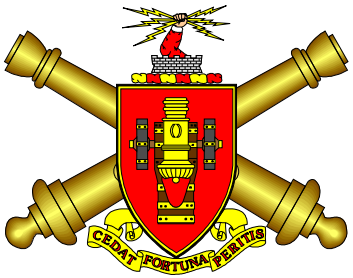
Do What is Right!



Ethics

Victory thru Justice!

- **Gift Rules**
- **Travel Benefits**
- **Use of Government Resources**
- **Private Organizations**



Ethics

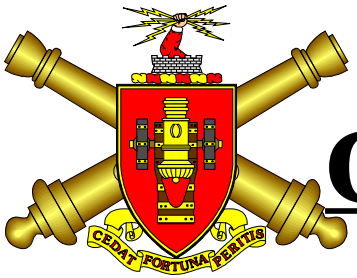
Victory thru Justice!

- What is a Gift?
- Gifts from Outside Sources
- Gifts between Employees

Gifts from Outside Sources

Victory thru Justice!

- **General Rule: Can't Accept**
  - **Because of official position**
  - **From prohibited source**
- **Exceptions:**
  - **$20/$50 rule**
  - **Personal relationship**
  - **Social invitations—not from prohibited source**

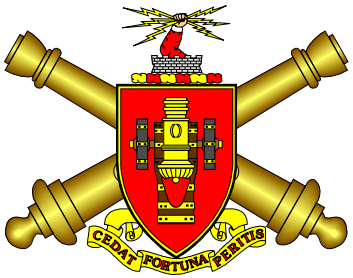


Gifts between Employees

Victory thru Justice!

- **General Rule: No Gifts from Subordinate to Superior**
- **Exceptions:**
  - **Occasional basis -- $10 dollar limit**
  - **Personal hospitality -- No $10 limit**
  - **Infrequent occasions -- $300/$10 Rules**
  - **Terminate boss -- $300/$10 and “Perry Rule”**

Travel Benefits



Victory thru Justice!

- **Frequent flyer points can now be used by the individual**
- **Use points for: tickets, reduced fare, upgrades**
- **Bumping Rules:**
  - **Voluntary – you keep it**
  - **Involuntary – US keeps it**
- **No first class:**
  - **Unless offered “on the spot”**
  - **Never in uniform!**

Travel Benefits

Victory thru Justice!

- **New Rule on Rental Cars:**
  - **Personal use after mission complete is OK!**
  - **Insurance, gas, mileage, tolls, etc., are on you**
  - **Frequent flyer points belong to individual**
- **Use points for: tickets, reduced fare, upgrades**
- **Use of Credit Cards:**
  - **Points on personal credit card are yours**

Use of Gov't Resources

Victory thru Justice!

- **General Rule:** *"Employees shall protect and conserve Federal property and shall not use it for other than authorized purposes."* ***5 CFR 2635.101(b)(9)***
  - **Equipment**
  - **Time**
  - **Inside Information**
  - **Communications**
  - **Internet Access**
  - **Transportation**

Authorized?

Victory thru Justice!

- **Command/Supervisory Call**
- **Activity must not detract from performance of official duties**
- **Activity must be REASONABLE in duration and frequency**
- **Activity must use personal time**
- **No significant cost to DoD**

Private Organizations

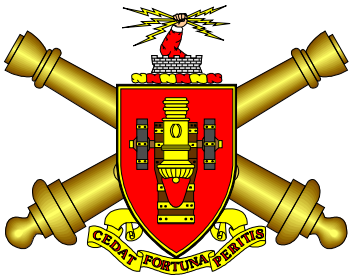
Victory thru Justice!

- **Players**
- **Principles:**
  - **SOC is a commander's program**
  - **Army benefits from private organizations**
- **Things you can do**
  - **What about…..?**

A Commander's Program

Victory thru Justice!

- **Under the JER, Commanders:**
  - **Approve private organization requests to operate on DoD installations**
  - **Appoint liaisons to private organizations**
  - **Approve co-sponsorship of private organization events**
  - **Decide whether to support private organization events**



What about?

Victory thru Justice!

- **Coerce membership**
  - ***Respect personal choice***
- **Officially endorse PO**
  - ***Personal endorsement is OK***
- **Play favorites**
  - ***Allow equal opportunity for similar POs***
- **These are punitive provisions**
  - ***Call Ethics Counselor with questions***

Things You Can do

Victory thru Justice!

- **Authorize Time Off For:**
  - **Community Support and Civic Awareness**
  - **Soldiers' activities with PO's**
  - **All employees for activities of professional associations**

What about….?

Victory thru Justice!

- **Detailing subordinates to support your unofficial activities in support of POs**
  - ***Generally not allowed***
  - ***Does not apply to volunteers***
  - ***Does not apply to official support to events***
- **Punitive provision – contact Ethics Counselor**

Things you can do

Victory thru Justice!

- **As Commander, approve support for PO Events**
  - ***Follow JER criteria***
  - ***Consult with Ethics Counselor***

What about….?

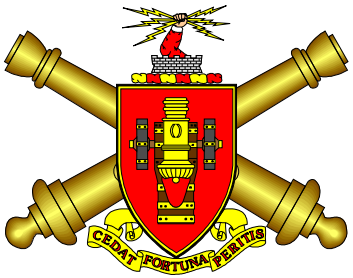
Victory thru Justice!

- **As Commander, approve support for YOUR OWN PO events?**
  - ***PO Officers/active participants***
  - ***Avoid playing favorites***
  - ***Pass decision to next higher command***

Conclusion

Victory thru Justice!

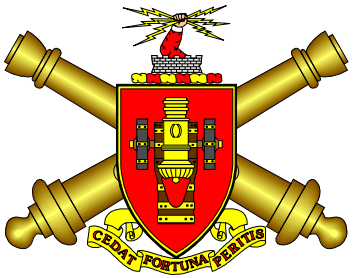
- **Questions?**
- **Other issues of interest to commanders?**



Victory thru Justice!

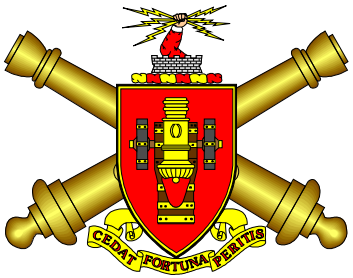
What Else Should Battalion Commanders Know?

50 Ways



Victory thru Justice!

1. **Cover something (anything) up.**
2. **Touch soldiers when you are angry.**
3. **Use unit property for personal purposes.**
4. **Create an atmosphere of racial intolerance.**
5. **Unnecessarily touch soldiers**



50 Ways

Victory thru Justice!

6. Permit uncontrolled dispatch of vehicles.

7. Unbutton your fly in the shadow of the flagpole.

8. Fudge a travel voucher.

9. Let a mediocre driver operate expensive equipment.

10. Exert “command influence” in the court-martial/Art. 15 process.

50 Ways

Victory thru Justice!

11. Repeatedly degrade a soldier.

12. Have only one person oversee a cup and flower fund.

13. Drive after drinking.

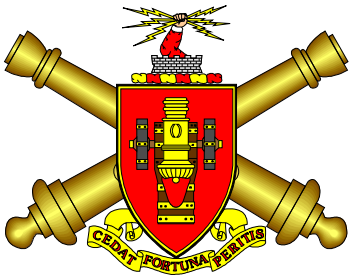
14. Let your soldiers do favors for you.

15. Enter a popularity contest.

50 Ways

Victory thru Justice!

16. Keep a soldier from seeing the IG or writing a Congressman.
17. Shoplift.
18. Become overly friendly with a superior/subordinate's spouse.
19. Let property accountability take care of itself—month's pay.
20. Take every occasion to try to outshine your peer.



50 Ways

Victory thru Justice!

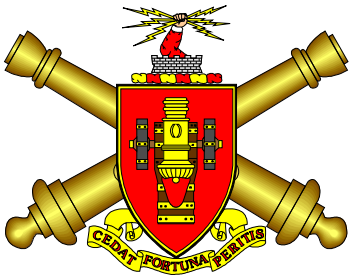
21. Lose the finger, toe, ear, or nose of a soldier.

22. Let your soldiers sleep anywhere during field exercises.

23. Burn down a tent.

24. Keep a sloppy headquarters.

25. Lose a weapon.



50 Ways

Victory thru Justice!

26. Allow loose ammo/explosives to come back from the range.

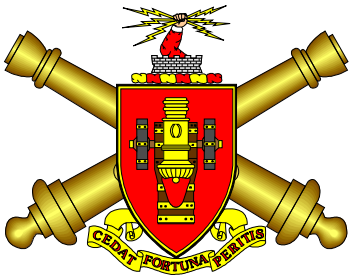
27. Take all the credit yourself.

28. Push the Army's weight limits.

29. Beat your spouse.

30. Ignore a problem in the hope that it will go away.

50 Ways



Victory thru Justice!

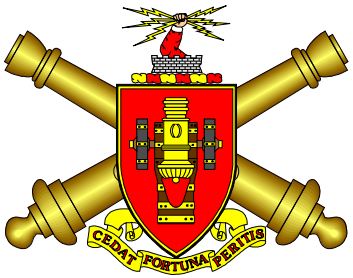
31. Make subordinates guess what you want.

32. Rely on unit safety briefings to keep the unit safe.

33. Get too close to subordinates/superiors.

34. Use government vehicles in a housing area.

35. Lose track of your checkbook



50 Ways

Victory thru Justice!

36. Lose a piece of COMSEC equipment.

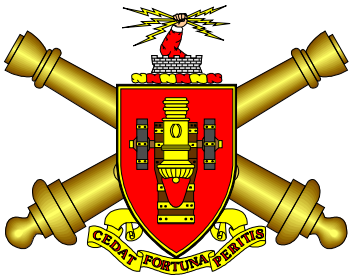
37. Let someone else tell your boss some bad news about the unit.

38. Single women out when determining whether to offer a remark.

39. Run a sloppy drug/urine testing program.

40. Play around/joke around with

50 Ways



Victory thru Justice!

41. Fail the APFT.

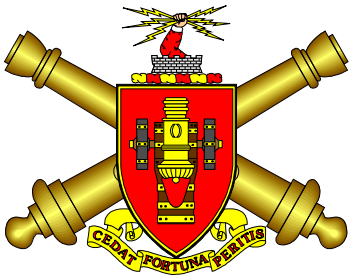
42. Let someone else sign your name to documents.

43. Don’t delegate far enough.

44. Delegate too far.

45. Take a job just because you believe it will advance you.

50 Ways



Victory thru Justice!

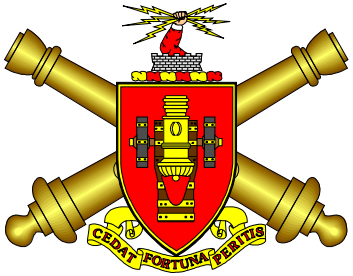
46. Blame someone else for your troubles.

47. View and/or download porn on a Government computer.

48. Play around with weapons.

49. Don’t return phone calls.

50. Fail to meet suspense dates.



Victory thru Justice!

Good Luck!